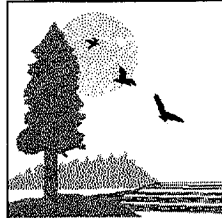
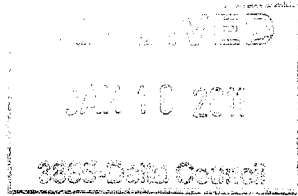


CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



January 6, 2011

CURTIS L. FOSSUM, Executive Officer

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File Ref: SCH # **2010122028**

Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, Ca 95814

Subject: Notice of Preparation (NOP) for the Draft Environmental Impact Report (EIR) for the Delta Plan

Dear Ms. Macaulay:

The California State Lands Commission (CSLC) staff has reviewed the subject NOP and has the following comments. Under the California Environmental Quality Act (CEQA), the CSLC is a Trustee Agency for this project and, depending on the final alternative selected, may also be a Responsible Agency. Staff's review of the NOP indicates that the proposed Delta Plan will include a primary planning area, consisting of the statutory Delta and Suisun Marsh and a secondary planning area that includes the watersheds that contribute flows to the Delta (including areas within the Delta watershed upstream of the Delta and the Trinity River watershed) and areas where users use water from the Delta watershed.

Jurisdictional Comments

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space. The boundaries of these State-owned lands generally are based upon the last naturally occurring location of the ordinary high or low water marks prior to artificial influences. On tidal waterways, the State's sovereign fee ownership extends landward to the Ordinary High Water Mark as it last naturally existed. On navigable non-tidal waterways, the State holds fee ownership of the bed landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, as they last naturally existed. Such boundaries may not be readily apparent from present day site inspections. The State's sovereign interests are under the jurisdiction of the CSLC.

There are numerous rivers, streams and sloughs within the proposed planning areas in which the State of California has ownership or an interest and which are under the jurisdiction of the CSLC. This ownership and interest ranges from fee ownership,

which would require a lease for any project located on sovereign land, to a public trust easement for trust uses and to a right for public navigation. The CSLC would like the opportunity to review and comment on any proposed projects involving any river, stream and coastal waterway that may be proposed by this Plan.

Environmental Review Comments

Queries of the California Natural Diversity Database and U.S. Fish and Wildlife Service (USFWS) Special Status Species Database should be conducted to identify any special-status plant or wildlife species that may occur in the region. The Draft EIR should address the potential for such species to occur onsite or in the project area.

One of the major stressors of the Sacramento and San Joaquin River system, and Delta is introduced species. Therefore, the Draft EIR should consider a range of alternatives for prevention programs for terrestrial and aquatic invasive species (including quarantine, early detection, and early response) to slow the introduction of invasive species, such as the Quagga mussel, into high demand and sensitive areas. As part of the alternative analysis, the proposed plan should take into consideration the current and proposed aquatic invasive species prevention programs. In addition, in light of the recent decline of pelagic organisms and in order to protect at-risk fish species, the Draft EIR should examine if the objectives of the plan would favor non-native fisheries within the Sacramento and San Joaquin River system, and Delta systems.

The Draft EIR should also evaluate noise and vibration impacts on fish and birds from any construction or restoration activities in the water, construction on the levees and land-side supporting structures of the Sacramento and San Joaquin River system, Delta, and flood control facilities. Mitigation measures may be needed that would include species-specific work windows as defined by California Department of Fish and Game (CDFG), USFWS, and National Marine Fisheries Service.

Any construction activity associated with the water-side bank should consider water quality issues, such as increased turbidity and sedimentation, and make all the necessary arrangements to reduce or mitigate for these concerns. Additional regulatory and discretionary permits may be required for construction and restoration projects within the purview of the Draft EIR such as levee repair projects. Under these conditions permits may include: U.S. Army Corps of Engineers (sections 408, 404, and Section 10 of the Safe Rivers and Harbors Act), the CDFG (Fish and Game Code Section 1600), and the Regional Water Quality Control Board (Section 401). Regional and county permitting jurisdictions may include Air Quality Management Districts or Air Pollution Control Districts. A table listing all such permits would be helpful.

An evaluation of potential submerged cultural resources in the project area will need to be undertaken. Any submerged archaeological site or submerged historic resource remaining in state waters for more than 50 years is presumed to be significant. The title to all abandoned shipwrecks and all archaeological sites and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the CSLC. The CSLC maintains a shipwrecks database of known and potential vessels located on the State's tide and submerged lands; however, the location of many shipwrecks remains unknown. The recovery of objects from any

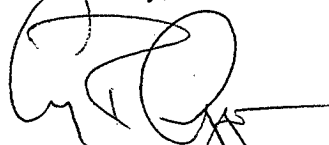
submerged archaeological site or shipwreck requires a salvage permit under Public Resources Code section 6309. On statutorily granted tide and submerged lands, a permit may be issued only after consultation with the local grantee and a determination by the CSLC that the proposed salvage operation is not inconsistent with the purposes of the legislative grant. An evaluation pursuant to Code of Federal Regulations section 106 should be made, as well, to determine any potential terrestrial cultural resources in the plan areas where construction can occur.

Greenhouse gas (GHG) emissions information consistent with the California Global Warming Solutions Act (AB 32) should be included in the Draft EIR. This would include a determination of the GHGs that will be emitted as a result of construction and ongoing maintenance of the levee system, a determination of the significance of those impacts, and mitigation measures to reduce any impacts found to be significant.

The Draft EIR should consider the effects of sea level rise on all resource categories potentially affected by the proposed Plan. Please note that when applying for a surface lease from the CSLC, staff is directed to (1) request information concerning the potential effects of sea level rise on proposed projects, and (2) if applicable, require applicants to indicate how they plan to address sea level rise and what adaptation strategies are planned during the projected life of each project. For further information, please see "A Report on Sea Level Rise Preparedness, Resurvey" (Report), which the CSLC approved at its meeting on July 23, 2010 (the Report and accompanying staff report can be found on CSLC's website: <http://www.slc.ca.gov/>). One of the recommendations from the Report is to direct CSLC staff to consider the effects of sea level rise to hydrology, soils, geology, transportation, recreation, and other resource categories in all environmental determinations associated with CSLC leases.

As a responsible agency, the CSLC will need to rely on the Final EIR for the issuance of any applicable leases and, therefore, we request that you consider our comments prior to adoption of the EIR. If you have any questions about our leasing requirements, please contact Diane Jones, Public Land Manager, at (916) 574-1843 or Diane.Jones@slc.ca.gov. For questions related to the environmental review, please contact Joan Walter at (916) 574-1310 or Joan.Walter@slc.ca.gov. If you have any questions involving the Shipwreck and Historic Maritime Resources Program please contact Staff Counsel Pam Griggs at (916) 574-1854 or Pamela.Griggs@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
P. Griggs, CSLC
D. Jones, CSLC
J. Walter, CSLC

